

ARKANSAS COURT OF APPEALS
ANDREE LAYTON ROAF, JUDGE
NOT DESIGNATED FOR PUBLICATION
DIVISION III

CACR05-1200

May 31, 2006

ROGER KEITH HAIRSTON
APPELLANT

APPEAL FROM MILLER COUNTY
CIRCUIT COURT
[NO. CR-03-199-2, CR-04-265-2]

v.

STATE OF ARKANSAS

HONORABLE JAMES S. HUDSON JR.,
CIRCUIT JUDGE

APPELLEE

APPEAL DISMISSED

Appellant Roger Keith Hairston appeals from the entry of his conditional guilty pleas, arguing that the trial court erred in denying his motion to suppress evidence because the affidavit that served as the basis for the search warrant for the search of his home was insufficient in that it provided no time frame from which to infer when contraband or other evidence of a crime could be expected to be found in his home. We dismiss the appeal because Hairston failed to explicitly appeal from the judgment as required by Rule 24.3 of the Arkansas Rules of Criminal Procedure.

Miller County officers encountered Hairston at about 8:00 a.m. on the morning of January 20, 2003, after following up on a welfare concern call placed around midnight about a possibly intoxicated man in a white truck. When officers approached Hairston's vehicle, Captain Toby Giles noticed a light bulb with a hole burned in the center, commonly used to inhale methamphetamine, in plain sight inside the cab of the truck. Giles immediately informed the other officers to place Hairston under arrest and read him his *Miranda* rights. Before being read his rights, Hairston stated that he had been suffering from cluster headaches and needed something to help with the pain. After being *Mirandized*, during transport to the Sheriff's department, Hairston told several officers that

he had unsuccessfully attempted to get a few physicians to write him a prescription for methamphetamine because it was the only thing that helped relieve his painful headaches. Hairston then stated that he had started cooking methamphetamine himself.

During the pretrial suppression hearing, Tony Potts, a narcotics investigator, testified that he had become familiar with Hairston prior to January 20, 2003, because the Organized Crime Unit had been getting reports that Hairston manufactured and sold methamphetamine from his residence. Potts stated that his office had conducted surveillance on Hairston's residence fifteen to twenty times and had been doing so for a little over one month. After learning of Hairston's statements to the police, Potts typed out an affidavit for a search warrant for Hairston's residence. The circuit judge signed the search warrant. At Hairston's residence, officers found chemicals used to manufacture drugs, marijuana, white powder substances, glass bulbs with holes burned in them, and other chemicals and paraphernalia.

The State initially charged Hairston with five counts: 1) possession of methamphetamine with intent to deliver; 2) manufacture of methamphetamine; 3) possession of drug paraphernalia used to manufacture methamphetamine; 4) simultaneous possession of drugs and firearms; and 5) possession of marijuana with intent to deliver. After a plea negotiation, count 4 was nolle prossed and counts 1 and 2 were amended as follows: 1) simple possession of methamphetamine and 2) criminal attempt to manufacture methamphetamine. Hairston pled guilty to count 1 and received a sentence of ten years' probation. Hairston entered conditional guilty pleas to counts 2, 3, and 5, reserving his right to appeal denial of his motion to suppress evidence in accordance with Rules 24.3(b) of the Arkansas Rules of Criminal Procedure.

Hairston now argues that the affidavit underlying the search warrant was deficient because the facts did not provide a proper time frame from which to infer when contraband or evidence or a crime would be found at the residence. We do not have jurisdiction to hear this appeal because Hairston failed to appeal from the judgment and conviction order entered pursuant to his guilty pleas.

See Hill v. State, --- Ark. ---, --- S.W.3d --- (Oct. 13, 2005); *McDonald v. State*, 354 Ark. 680, 124 S.W.3d 438 (2003); *Webb v. State*, --- Ark. App. ---, --- S.W.3d--- (Feb. 15, 2006).

A notice of appeal filed prior to entry of the judgment and commitment is now treated as filed on the day after the judgment is entered pursuant to Rule 2(b)(1) of the Rules of Appellate Procedure-Criminal. However, the Arkansas Supreme Court has held that criminal defendants desiring to appeal adverse rulings must appeal *from* the judgment of conviction. *Hill, supra*. In addition, the Rule pursuant to which Hairston appeals specifically states “a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, *on appeal from judgment*, to review of an adverse determination of a pretrial motion to suppress seized evidence. . . .” Ark. R. Crim. P. 24.3(b) (2005) (emphasis added). This rule requires a notice of appeal from the judgment, not the order denying the motion to suppress. *McDonald, supra*.

Here, an order of conditional plea was entered on April 25, 2005. The notice of appeal was filed May 23, 2005, and states that “[D]efendant gives notice of his appeal pursuant to the conditional plea of guilty entered ... April 25, 2005,” and makes no reference to the conviction itself. The judgment and commitment order was entered on August 3, 2005. No subsequent notice of appeal appears in the Addendum or record. Common sense would dictate that Hairston is indeed appealing his conviction and is seeking a reversal and remand in this appeal. However, we cannot ignore supreme court precedent in this instance and treat his notice of appeal as filed after the judgment and commitment order and, thus, effective to appeal the judgment. Because Hairston’s notice of appeal states only that he appeals “pursuant” to his conditional guilty plea, and not “from” his judgment of conviction, supreme court precedent requires that we dismiss this appeal for lack of jurisdiction.

Appeal dismissed.

GLOVER and NEAL, JJ., agree.